

APPEAL NO. 060587
FILED MAY 17, 2006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 14, 2006. The hearing officer resolved the disputed issues by deciding that the compensable injury of ___, does not include an injury to the low back, but it does include injury to the testicles and epididymo-orchitis/epididymitis of the left testicle; that the appellant (claimant) has had disability from August 11, 2005, continuing through the date of the CCH; and that the respondent (carrier) has waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022 and that because of its waiver, carrier is liable for compensation for the ___, compensable injury, including the low back, testicles, and epididymo-orchitis/epididymitis of the left testicle. The claimant appealed, disputing the hearing officer's findings of fact that the claimant's L4-5 and L5-S1 conditions are not causally related to the ___, work-related incident and that the claimant did not sustain injury to his low back as a result of the ___, work-related injury. The claimant additionally appeals the hearing officer's conclusion of law that the compensable injury of ___, does not include an injury to the low back, but it does include injury to the testicles and epididymo-orchitis/epididymitis of the left testicle. The carrier responded, urging affirmance, contending that there is sufficient evidence to support the disputed findings of fact and conclusion of law. The hearing officer's determination that the claimant has had disability from August 11, 2005, through the date of the CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on ___, and that the compensable injury does extend to and include the testicles and epididymo-orchitis/epididymitis of the left testicle. The claimant testified that he experienced pain in his groin and low back when a coworker released his grip on a board he was passing down to the claimant, causing the claimant to struggle to keep the board from falling. In evidence was a lumbar spine x-ray, dated May 27, 2005, which gave degenerative disc disease at L4-5 and L5-S1 as an impression. The hearing officer was not persuaded by the evidence presented that the claimant's L4-5 and L5-S1 conditions are causally related to the compensable injury nor was she persuaded that the claimant sustained an injury to his low back as a result of the ___, work-related incident. In view of the evidence presented, we cannot conclude that the hearing officer's findings are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We note that 28 TEX. ADMIN. CODE § 124.3(e) (Rule 124.3(e)) provides that Section 409.021 does not apply to disputes of extent of injury. Extent of injury was a disputed issue at the CCH as was carrier waiver. The issue regarding carrier waiver read as follows: "Has the carrier waived the right to contest compensability (extent) of the claimed injury by not timely contesting the injury in accordance with TEX. LABOR CODE ANN. Section 409.021 and Section 409.022?" Despite the inartful wording of the issue, it is clear that carrier waiver of the claimed injury was actually litigated and that the hearing officer considered the correct standard in making her findings. Section 409.021(c), effective for a claim based on a compensable injury that occurred on or after September 1, 2003, provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. In Appeals Panel Decision 041738-s, decided September 8, 2004, the Appeals Panel established that when a carrier does not timely dispute the compensability of a claim, the compensable injury is defined by the information that could have been reasonably discovered by the carrier's investigation prior to the expiration of the waiver period.

It was undisputed that the carrier first received written notice of the ____, compensable injury on June 3, 2005. The hearing officer's findings that evidence of the claimant's claim of a lower back injury related to the ____, compensable injury could have reasonably been discovered by the carrier on or before the 60th date after June 3, 2005, and that the carrier failed to dispute the claimed lower back injury on or before the 60th day after the date on which it first received written notice of the claimed injury have not been appealed. Therefore, the claimant's low back injury became compensable as a matter of law because the carrier failed to timely dispute. The hearing officer's determination that the compensable injury of ____, does not include an injury to the low back is reversed and a new determination rendered that the compensable injury of ____, does include an injury to the low back.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEE F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge